

AMENDED IN SENATE APRIL 22, 2003

AMENDED IN SENATE MARCH 24, 2003

**SENATE BILL**

**No. 1016**

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**Introduced by Senator Bowen**

February 21, 2003

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An act to ~~add Section 30101.8 to~~ *amend Section 30101.7 of the Revenue and Taxation Code, relating to tobacco.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, as amended, Bowen. Tobacco products: ~~taxation~~ *sale*.

*Existing federal law, known as the Jenkins Act, requires any person that sells or transfers in interstate commerce cigarettes into a state that taxes the sale or use of cigarettes to file certain information with the tobacco tax administrator of that state.*

The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. That law requires every distributor of cigarettes to pay taxes, as prescribed, on the distribution of cigarettes.

Existing law requires ~~that~~, except under specified circumstances, each retail sale of cigarettes in the state to be a vendor-assisted, face-to-face sale, as defined. ~~One of these exceptions is~~ *Existing law exempts a person from this restriction on face-to-face sales when all applicable state taxes have been paid or when the outside of a shipping container of cigarettes has been labeled, as specified.*

~~This bill would prohibit a public or private postal or package delivery service from knowingly delivering a package that contains a tobacco product unless the seller has paid all applicable excise and use taxes.~~

~~Existing law permits the board or its authorized representative to make examinations of the books, papers, records, and equipment of any person dealing in, transporting, or storing cigarettes or tobacco products and other investigations that it deems necessary in carrying out these provisions.~~

~~Existing law authorizes the board, by ruling or otherwise, to require additional, other, or supplemental reports, as specified, from licensed distributors, dealers, transporters, common and private carriers, warehousemen, bailees, and other persons.~~

~~This bill would also require a public or private postal or package delivery service to submit a valid invoice, as specified, for each package containing a tobacco product that it delivers or, if it cannot provide the invoice, information as required by the board.~~

*This bill would, in addition to the other requirements for an exception from the restriction on face-to-face sales of cigarettes in this state, also require a person to fully comply with the requirements of the federal Jenkins Act and submit quarterly reports of specified information to the State Board of Equalization.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 30101.8 is added to the Revenue and~~
- 2     ~~SECTION 1. Section 30101.7 of the Revenue and Taxation~~
- 3     ~~Code is amended to read:~~
- 4     30101.7. (a) It is the intent of the Legislature in enacting this
- 5     section to facilitate the collection of all applicable state surtaxes
- 6     and sales or use taxes on cigarettes sold to residents of the state.
- 7     (b) Except as provided in subdivision (d), no person may
- 8     engage in a retail sale of cigarettes in California unless the sale is
- 9     a vendor-assisted, face-to-face sale.
- 10    (c) For the purposes of this section, “face-to-face sale” means
- 11    a sale in which the purchaser is in the physical presence of the seller
- 12    or the seller’s employee or agent at the time of the sale. A
- 13    face-to-face sale does not include any transaction conducted by
- 14    mail order, the Internet, telephone, or any other anonymous
- 15    transaction method in which the buyer is not in the seller’s physical
- 16    presence or the physical presence of the seller’s employee or agent
- 17    at the time of the sale.



(d) A person may engage in a non-face-to-face sale of cigarettes to a person in California provided that ~~either~~ *all* of the following conditions ~~is~~ *are* met:

(1) *The seller has fully complied with all of the requirements of Chapter 10A (commencing with Section 375) of Title 15 of the United States Code, otherwise known as the Jenkins Act.*

(2) *The seller provides quarterly reports of the information required to be provided to the state pursuant to the Jenkins Act to the State Board of Equalization.*

(3) *The seller has fully complied with either of the following requirements:*

(A) All applicable California taxes on the cigarettes have been paid.

~~(2)~~

(B) The seller includes on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States an externally visible and easily legible notice located on the same side of the shipping container as the address to which the package is delivered stating as follows:

“IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.”

(e) The Attorney General or a city attorney, county counsel, or district attorney may bring a civil action to enforce this section against any person that violates this section and, in addition to any other remedies provided by law, the court shall assess a civil penalty in accordance with the following schedule:

(1) A civil penalty of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500) for the second violation within a five-year period.

(3) A civil penalty of not less than four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500) for a fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth or subsequent violation within a five-year period.

(f) This section does not prohibit any lawful sale of a tobacco product that occurs by means of a vending machine.

(g) Nothing in this section shall relieve the seller of cigarettes from any other applicable requirement of state law relating to the sale of cigarettes.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

~~Taxation Code, to read:~~

~~30101.8.—(a) No public or private postal or package delivery service shall knowingly deliver a package containing a tobacco product in this state unless the seller is in compliance with Sections 30101 and 30101.7.~~

~~(b) A public or private postal or package delivery service that knowingly accepts a tobacco product for direct delivery to the purchaser shall submit a copy of a valid invoice from a manufacturer, seller, or distributor that includes the name and address of the purchaser, the brand name of the tobacco product, and the type and quantity of tobacco purchased for each package containing a tobacco product to ensure that appropriate excise and use taxes, pursuant to requirements contained in this part have been collected.~~

~~(c) If the public or private postal or package delivery service cannot provide a copy of the invoice pursuant to subdivision (b), it may submit information it is required to maintain pursuant to~~

1 ~~Section 30454, and regulations adopted pursuant to Section~~  
2 ~~30451.~~

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